

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 28:051. Leases and rentals.

5 RELATES TO KRS 138.460, 138.463, 139.010 139.105, 139.200, 139.210, 139.270, 139.280, 139.290,
6 139.310, 139.330, 139.340, 139.430, 139.471, 139.484, 139.600, 139.620

7 STATUTORY AUTHORITY: KRS 131.130(1), 139.710

8 NECESSITY FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to make
9 administrative regulations for the administration and enforcement of all tax laws in this state, and KRS
10 139.710 requires the department to administer the provisions of KRS Chapter 139, regarding sales and use
11 taxes. This administrative regulation sets forth requirements for leases and rentals of tangible personal
12 property or digital property relating to the sales and use tax law.

13 Section 1. Definitions. (1) "Primary property location" means the location as indicated by an address
14 for the property provided by the lessee that is available to the lessor from the lessor's records maintained in
15 the ordinary course of business, if use of this address does not constitute bad faith. This location shall not
16 be altered by intermittent use of the property at different locations.

17 (2) "Transportation equipment" means any of the following:

18 (a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate
19 commerce;

20 (b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater,
21 trailers, semi-trailers, or passenger buses that are:

22 1. Registered through the International Registration Plan; and

1 2. Operated under authority of a carrier authorized and certificated by the U.S. Department of
2 Transportation or another federal authority to engage in the carriage of persons or property in interstate
3 commerce;

4 (c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of
5 Transportation or another federal authority or a foreign authority to engage in the carriage of persons or
6 property in interstate or foreign commerce; and

7 (d) Containers designed for use on and component parts attached or secured on the items set forth in
8 paragraphs (a) through (c) of this section.

9 Section 2. Registrants. (1) A person engaged in leasing or renting tangible personal property or digital
10 property for use in Kentucky is a retailer and shall:

11 (a) Register with the Department of Revenue to obtain a retail sales and use tax permit; and

12 (b) Report and pay the applicable tax derived from the gross lease or rental receipts.

13 (2) Each period for which a lease or rental is payable shall be considered a complete transaction in
14 determining a retailer responsible for the tax in accordance with KRS 139.010.~~[KRS 139.110(1)(e).]~~

15 Section 3. Gross Receipts. (1) Gross receipts from the lease or rental of tangible personal property or
16 digital property shall include:

17 (a) The total amount of payments, or consideration received by the lessor from the lessee;

18 (b) Payments paid by the lessee to a third party for the benefit of the lessor which are required by the
19 terms of the agreement; and

20 (c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges
21 in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.

22 (2) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part
23 of the lease or rental agreement, shall not be subject to tax.

24 Section 4. Tax Responsibility. (1) The retailer/lessor leasing or renting tangible personal property or
25 digital property within Kentucky shall be required to collect the sales tax from the customer/lessee.

1 (2) Every out-of-state retailer leasing or renting tangible personal property or digital property for
2 storage, use or other consumption in this state shall be required to collect the use tax from the purchaser
3 and remit the tax on gross lease or rental receipts to the Department of Revenue.

4 (3) The lessee's responsibility for the use tax shall not be relieved until payment of the amount due has
5 been made to the Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

6 Section 5. Resale. (1) A lessor may claim a resale exemption for tangible personal property or digital
7 property purchased exclusively for lease or rental.

8 (2) Parts and accessories purchased by the lessor which become part of the leased or rented property
9 may also be purchased under a resale exemption. However, property purchased by a lessee to maintain
10 leased or rented property of a lessor shall be subject to the sales and use tax.

11 (3) Tangible personal property or digital property purchased for resale without payment of the tax and
12 to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for
13 some purpose other than lease or rental shall become subject to tax upon this subsequent use. The tax shall
14 be measured by purchase price of the property and shall be in addition to the tax due on the lease or rental
15 receipts.

16 (4) Tangible personal property or digital property purchased in part for lease or rental and in part for
17 use shall not be purchased from a vendor under a resale exemption and shall be subject to tax.

18 (5) A retailer who purchases tangible personal property or digital property for outright sale, but, while
19 holding the property in the retailer's inventory, makes use of the property in the retailer's business through
20 lease or rental shall be responsible for the applicable tax to the lease or rental receipts.

21 (6) Tangible personal property or digital property purchased by a retailer engaged exclusively in leasing
22 or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for
23 an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has
24 paid the sales or use tax applicable to the purchase price of the property.

25 Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property or digital
26 property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor

1 takes from the lessee a certificate of exemption as evidence that the property leased will be used in an
2 exempt manner under the sales and use tax law.

3 Section 7. Motor Vehicles. (1) The lease or rental of motor vehicles, which are for use on the public
4 highways and upon which any applicable tax levied under KRS 138.460 or KRS 138.463 has been paid,
5 shall not be subject to the sales or use tax.

6 (2) Motor vehicles, which are not subject to the motor vehicle usage tax established in KRS 138.460 or
7 the U-Drive-It tax, established in KRS 138.463, shall be subject to the sales and use tax unless another
8 applicable exemption applies.

9 Section 8. Reciprocity. (1) The sales and use tax law shall provide for credit against any Kentucky use
10 tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of
11 Kentucky.

12 (2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state shall be able to
13 receive credit for the amount paid that other state up to the amount due to Kentucky.

14 (3) Kentucky shall tax any excess lease or rentals, relating to the lump-sum tax amounts.

15 (4) Reciprocity shall apply to any tax due Kentucky on lease or rental receipts only if the reciprocal
16 state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

17 Section 9. Lease of Real, Tangible, Digital and Intangible Property. (1) If lease or rental activity
18 involves the lease or rental of real property, in combination with[;] tangible personal, digital and intangible
19 property, as in the lease or rental of a business operation or establishment, the total amount of the lease or
20 rental shall be subject to the sales and use tax unless the amount applicable to the tangible personal property
21 and digital property is separately stated.

22 (2) The amount separately stated for the tangible personal property and digital property shall not be less
23 than the fair market lease or rental value for like property for a like rental or lease period.

24 (3) The lease or rental of tangible personal property and digital property between separate entities owned
25 by the same or similar stockholders shall be subject to the tax unless otherwise exempted by the sales and
26 use tax law.

(4) The tax shall be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules. (1) The lease or rental of tangible personal property and digital property, other than property identified in subsection (5) ~~[(3)]~~ of this section, shall be sourced according to the provisions of KRS 139.105(1).

(2) For a lease or rental that requires recurring periodic payments, the first periodic payment shall be sourced as follows according to the provisions of KRS 139.105(1).~~[(a)]~~ Periodic payments made subsequent to the first payment shall be sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use shall include business property that accompanies employees on business trips and service calls.

(3) ~~[(b)]~~ For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of KRS 139.105(1)~~[paragraph (a) of this subsection (c) of this section.]~~.

(4) ~~[(c)]~~ This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(5)~~[(3)]~~ The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:


(a) For a lease or rental that requires recurring periodic payments, each periodic payment shall be sourced to the primary property location.

(b) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced in accordance with the provisions of KRS 139.105(1)~~[subsection (2) of this section]~~.

(c) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

103 KAR 28:051

APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3874 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 28:051

Contact Person: Lisa Swiger

Phone Number: (502) 782-5705

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 28:051 contains a repealed statutory reference and an unclear reference regarding the sourcing of certain payments. "Digital property" is also omitted. The proposed amendment updates regulatory language to address these issues

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. The repealed statutory reference is removed and replaced with the updated statutory reference and clarifying language is provided in Section 10(2)(b) and Section 10(3)(b). "Digital property" is inserted as appropriate pursuant to KRS 139.200 and KRS 139.260.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost to implement the proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional cost to implement and enforce the proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no additional cost to implement and enforce the proposed amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) : Tiering is not applicable as the proposed amended regulation updates repealed, outdated or prior information.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 28:051

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: